

HOUSE BILL No. 1601

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-1.1-15; IC 33-3-5.

Synopsis: Property tax appeals procedures. Requires that determinations by the state board of tax commissioners and the tax court be based on the record generated in the proceedings before the state board of tax commissioners in matters concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; (3) property tax exemptions; or (4) property tax credits. Provides that there is a rebuttable presumption in these matters that the county determination being appealed is correct. Makes related changes. Requires the division of appeals of the state board of tax commissioners to give notice of the date fixed for certain hearings at least 30 days before the date instead of at least ten days before the date.

Effective: July 1, 2001.

Sturtz

January 17, 2001, read first time and referred to Committee on Ways and Means.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1601

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-1.1-15-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) After receiving
3 a petition for review which is filed under section 3 of this chapter, the
4 division of appeals of the state board of tax commissioners shall
5 conduct a hearing at its earliest opportunity. In addition, the division of
6 appeals of the state board may assess the property in question,
7 correcting any errors which may have been made. **The state board of**
8 **tax commissioners, including its division of appeals, is not required**
9 **to assess the property in question. The state board of tax**
10 **commissioners, including its division of appeals, may limit the**
11 **scope of the appeal to the issues raised in the petition and the**
12 **evaluation of the evidence presented in support of those issues.** The
13 division of appeals of the state board shall give notice of the date fixed
14 for the hearing, by mail, to the taxpayer and to the appropriate township
15 assessor, county assessor, and county auditor. The division of appeals
16 of the state board shall give these notices at least ~~ten (10)~~ **thirty (30)**
17 days before the day fixed for the hearing.

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(b) The burden of persuasion and the burden of going forward with the proof is on the petitioner. There is a rebuttable presumption that the determination of the county property tax assessment board of appeals or other officer from which the appeal is taken is correct. The petitioner may rebut the presumption by presenting a prima facie case, supported by substantial and reliable evidence, that the determination is in error.

(c) If a petition for review does not comply with the state board of tax commissioners' instructions for completing the form prescribed under section 3 of this chapter, the division of appeals of the state board of tax commissioners shall return the petition to the petitioner and include a notice describing the defect in the petition. The petitioner then has thirty (30) days from the date on the notice to cure the defect and file a corrected petition. The division of appeals of the state board of tax commissioners shall deny a corrected petition for review if it does not substantially comply with the state board of tax commissioners' instructions for completing the form prescribed under section 3 of this chapter.

~~(c)~~ (d) The state board of tax commissioners shall prescribe a form for use in processing petitions for review of actions by the county property tax assessment board of appeals. The state board shall issue instructions for completion of the form. The form must require the division of appeals of the state board, to indicate agreement or disagreement with each item that is:

- (1) indicated on the petition submitted under section 1(e) of this chapter;
- (2) included in the township assessor's response under section 1(g) of this chapter; and
- (3) included in the county property tax assessment board of appeals' findings, record, and determination under section 2.1(d) of this chapter.

The form must also require the division of appeals of the state board to indicate the issues in dispute and its reasons in support of its resolution of those issues.

~~(d)~~ (e) After the hearing the division of appeals of the state board shall give the petitioner, the township assessor, the county assessor, and the county auditor:

- (1) notice, by mail, of its final determination;
- (2) a copy of the form completed under subsection ~~(c)~~; (d); and
- (3) notice of the procedures they must follow in order to obtain court review under section 5 of this chapter.

~~(e)~~ (f) The division of appeals of the state board of tax

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commissioners shall conduct a hearing within six (6) months after a petition in proper form is filed with the division, excluding any time due to a delay reasonably caused by the petitioner. The division of appeals shall make a determination within the later of forty-five (45) days after the hearing or the date set in an extension order issued by the chairman of the state board of tax commissioners. However, the state board of tax commissioners may not extend the final determination date by more than one hundred eighty (180) days. Except as provided in subsection (g):

(1) the failure of the division of appeals to make a determination within the time allowed by this subsection shall be treated as a final determination of the state board of tax commissioners to deny the petition; and

(2) a final decision of the division of appeals is a final determination of the state board of tax commissioners.

(g) A final determination of the division of appeals is not a final determination of the state board of tax commissioners if the state board of tax commissioners:

(1) gives notice to the parties that the state board of tax commissioners will review the determination of the division of appeals within fifteen (15) days after the division of appeals gives notice of the determination to the parties or the maximum allowable time for the issuance of a determination under subsection (f) expires; or

(2) determines to rehear the determination under section 5 of this chapter.

The state board of tax commissioners shall conduct a review under subdivision (1) in the same manner as a rehearing under section 5 of this chapter.

(h) A final determination must include separately stated findings of fact for all aspects of the determination. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. Findings must be based exclusively upon the evidence on the record in the proceeding and on matters officially noticed in the proceeding. Findings must be based upon evidence that is substantial and reliable. The hearing officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

SECTION 2. IC 6-1.1-15-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) Within fifteen (15) days after the division of appeals of the state board of tax commissioners gives notice of its final determination under section 4



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of this chapter to the party or the maximum allowable time for the issuance of a determination by the division of appeals under section 4 of this chapter expires, a party to the proceeding may request a rehearing before the board. The board may conduct a rehearing and affirm or modify its final determination, giving the same notices after the rehearing as are required by section 4 of this chapter. The state board of tax commissioners has thirty (30) days after receiving a petition for a rehearing to determine whether to grant a rehearing. Failure to grant a rehearing within thirty (30) days after receiving the petition shall be treated as a final determination to deny the petition. A petition for a rehearing does not toll the time in which to file a petition for judicial review unless the petition for rehearing is granted. If the state board of tax commissioners determines to rehear a final determination of the division of appeals, the state board of tax commissioners:

- (1) may conduct the additional hearings that the state board of tax commissioners determines necessary or review the written record of the division of appeals without additional hearings; and
- (2) shall issue a final determination within ninety (90) days after notifying the parties that the state board of tax commissioners will rehear the determination.

Failure of the state board of tax commissioners to make a determination within the time allowed under subdivision (2) shall be treated as a final determination affirming the decision of the division of appeals.

(b) A person may appeal the final determination of the division of appeals or the state board of tax commissioners regarding the assessment of that person's tangible property. The appeal shall be taken to the tax court. Appeals may be consolidated at the request of the appellants if it can be done in the interest of justice.

(c) If a person desires to initiate an appeal of the state board of tax commissioners' final determination, the person shall:

- (1) file a written notice with the state board of tax commissioners informing the board of his intention to appeal;
- (2) file a complaint in the tax court; and
- (3) serve the attorney general and the county assessor with a copy of the complaint.

(d) To initiate an appeal under this section, a person must take the action required by subsection (c) within:

- (1) forty-five (45) days after the state board of tax commissioners gives the person notice of its final determination under IC 6-1.1-14-11 unless a rehearing is conducted under subsection (a);

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(2) thirty (30) days after the board gives the person notice under subsection (a) of its final determination, if a rehearing is conducted under subsection (a) or the maximum time elapses for the state board of tax commissioners to make a determination under this section; or

(3) forty-five (45) days after the division of appeals gives notice of a final determination under section 4 of this chapter or the division fails to make a determination within the maximum time allowed under section 4 of this chapter, if a rehearing is not granted under this section.

(e) The failure of the state board of tax commissioners to conduct a hearing within the time period prescribed in section ~~4(b)~~ **4(f)** of this chapter does not constitute notice to the person of a board determination.

(f) In a case in which the final determination of the state board of tax commissioners would result in a claim by a taxpayer with respect to a particular year for a refund that exceeds:

(1) eight hundred thousand dollars (\$800,000); or

(2) an amount equal to ten percent (10%) of the aggregate tax levies of all taxing units in the county for that year;

whichever is less, the county executive may take an appeal to the tax court in the manner prescribed in this section, but only upon request by the county assessor.

SECTION 3. IC 6-1.1-15-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. **(a)** If an appeal is initiated by a person under section 5 of this chapter, the secretary of the state board of tax commissioners shall prepare a certified transcript **record** of the proceedings related to the appeal. ~~However, the transcript shall not include the evidence compiled by the board with respect to the proceedings. The secretary of the board shall transmit the transcript to the clerk of the court designated by the appellant.~~

(b) The record for judicial review must include the following documents and items:

(1) Copies of all papers submitted to the state board of tax commissioners, including its division of appeals, during the course of the action and copies of all papers provided to the parties by the state board of tax commissioners, including its division of appeals. For purposes of this subdivision, the term "papers" includes, without limitation, all notices, petitions, motions, pleadings, orders, orders on rehearing, briefs, requests, intermediate rulings, photographs, and other written documents.



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(2) Evidence received or considered by the state board of tax commissioners, including its division of appeals.

(3) A statement of whether a site inspection was conducted, and, if a site inspection was conducted, either:

(A) a summary report of the site inspection; or

(B) a videotape transcript of the site inspection.

(4) A statement of matters officially noticed.

(5) Proffers of proof and objections and rulings on them.

(6) Copies of proposed findings, requested orders, and exceptions.

(7) Either:

(A) a transcription of the audio tape of the hearing; or

(B) a transcript of the hearing prepared by a court reporter.

Copies of exhibits that, because of their nature, cannot be incorporated into the certified record must be kept by the state board of tax commissioners until the appeal is finally terminated. However, this evidence must be briefly named and identified in the transcript of the evidence and proceedings.

(c) If:

(1) a report of all or a part of the evidence or proceedings at a hearing conducted by the state board of tax commissioners, including its division of appeals, was not made; or

(2) a transcript is unavailable;

a party to the appeal initiated under section 5 of this chapter may prepare a statement of the evidence or proceedings. The statement must be submitted to the tax court and also must be served on all other parties. A party to the proceeding may serve objections or prepare amendments to the statement not later than ten (10) days after service.

SECTION 4. IC 33-3-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14. (a) **Subject to subsection (b)**, with respect to determinations as to whether any issues or evidence may be heard in an original tax appeal that was not heard in the administrative hearing or proceeding, the tax court is governed by the law that applied before the creation of the tax court to appeals to trial courts of final determinations made by the department of state revenue and the state board of tax commissioners.

(b) **This subsection applies only to a proceeding in a matter described in IC 6-1.1-30-11(c). This subsection does not apply to an appeal under IC 6-1.1-8-29 or any other determination of the state board of tax commissioners not described in IC 6-1.1-30-11(c).**

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Judicial review of disputed issues of fact must be confined to:

- (1) the record of the proceeding before the state board of tax commissioners, including its division of appeals; and**
- (2) any additional evidence taken under section 14.5 of this chapter.**

The tax court may not try the cause de novo or substitute its judgment for that of the state board of tax commissioners, including its division of appeals. Judicial review is limited to only those issues raised before the state board of tax commissioners, including its division of appeals, or otherwise described by the state board of tax commissioners, including its division of appeals, in its final determination.

(c) A person may obtain judicial review of an issue that was not raised before the state board of tax commissioners only to the extent that the:

- (1) issue concerns whether a person who was required to be notified of the commencement of a proceeding under this chapter was notified in substantial compliance with the applicable law; or**
- (2) interests of justice would be served by judicial resolution of an issue arising from a change in controlling law occurring after the state board of tax commissioners' action.**

SECTION 5. IC 33-3-5-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14.5. (a) This section applies only to proceedings in a matter described in IC 6-1.1-30-11(c). This subsection does not apply to an appeal under IC 6-1.1-8-29 or any other determination of the state board of tax commissioners not described in IC 6-1.1-30-11(c).

(b) The tax court may receive evidence in addition to that contained in the record of the determination of the state board of tax commissioners, including its division of appeals, only if it relates to the validity of the determination at the time it was taken and is needed to decide disputed issues regarding one (1) or both of the following:

- (1) Improper constitution as a decision making body or grounds for disqualification of those taking the agency action.**
- (2) Unlawfulness of procedure or decision making process.**

This subsection applies only if the additional evidence could not, by due diligence, have been discovered and raised in the administrative proceeding giving rise to a proceeding for judicial review.

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(c) The tax court may remand a matter to the state board of tax commissioners before final disposition of a petition for review with directions that the state board of tax commissioners or its division of appeals, as appropriate, conduct further factfinding or that the state board of tax commissioners or its division of appeals, as appropriate, prepare an adequate record, if:

- (1) the state board of tax commissioners or its division of appeals failed to prepare or preserve an adequate record;
- (2) the state board of tax commissioners or its division of appeals improperly excluded or omitted evidence from the record; or
- (3) a relevant law changed after the action of the state board of tax commissioners or its division of appeals and the tax court determines that the new provision of law may control the outcome.

(d) This subsection applies if the record for a judicial review prepared under IC 6-1.1-15-6 contains an inadequate record of a site inspection. Rather than remand a matter under subsection (c), the tax court may take additional evidence not contained in the record relating only to observations and other evidence collected during a site inspection conducted by a hearing officer or other employee of the state board of tax commissioners. The evidence may include the testimony of a hearing officer only for purposes of verifying or rebutting evidence regarding the site inspection that is already contained in the record.

SECTION 6. IC 33-3-5-14.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14.7. (a) This section applies only to proceedings in a matter described in IC 6-1.1-30-11(c). This subsection does not apply to an appeal under IC 6-1.1-8-29 or any other determination of the state board of tax commissioners not described in IC 6-1.1-30-11(c).

(b) The burden of demonstrating the invalidity of an action taken by the state board of tax commissioners, including its division of appeals, is on the party to the judicial review proceeding asserting the invalidity.

(c) The validity of an action taken by the state board of tax commissioners, including its division of appeals, shall be determined in accordance with the standards of review provided in this section as applied to the agency action at the time it was taken.

(d) The tax court shall make findings of fact on each material

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1 issue on which the court's decision is based.

2 (e) The tax court shall grant relief under section 15 of this
3 chapter only if the tax court determines that a person seeking
4 judicial relief has been prejudiced by an action by the state board
5 of tax commissioners, including its division of appeals, that is:

6 (1) arbitrary, capricious, an abuse of discretion, or otherwise
7 not in accordance with law;

8 (2) contrary to constitutional right, power, privilege, or
9 immunity;

10 (3) in excess of statutory jurisdiction, authority, or limitations,
11 or short of statutory right;

12 (4) without observance of procedure required by law; or

13 (5) unsupported by substantial and reliable evidence.

14 SECTION 7. [EFFECTIVE JULY 1, 2001] (a) To the extent
15 allowable under the Constitution of the State of Indiana and the
16 Constitution of the United States, IC 6-1.1-15-4, IC 6-1.1-15-5,
17 IC 6-1.1-15-6, and IC 33-3-5-14, all as amended by this act, and
18 IC 33-3-5-14.5 and IC 33-3-5-14.7, both as added by this act, apply
19 to all of the following:

20 (1) Proceedings in matters described in IC 6-1.1-30-11(c) that
21 are pending before the state board of tax commissioners,
22 including its division of appeals, on July 1, 2001.

23 (2) Proceedings in matters described in IC 6-1.1-30-11(c) that
24 are pending before the tax court on July 1, 2001.

25 (3) Proceedings in matters described in IC 6-1.1-30-11(c) that
26 are commenced in or remanded to the state board of tax
27 commissioners, including its division of appeals, after June 30,
28 2001.

29 (4) Proceedings in matters described in IC 6-1.1-30-11(c) that
30 are commenced in or remanded to the tax court after June 30,
31 2001.

32 (b) The enactment of legislation by the general assembly to
33 change the adjudication and judicial review procedures applicable
34 to matters described in IC 6-1.1-30-11(c) shall not be construed to
35 change the procedures applicable to the adjudication and judicial
36 review of other matters appealable to the tax court.

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